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Maine Labor Relations Board Annual Report, Fiscal Year 1991

Maine Labor Relations Board

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ANNUAL REPORT

MAINE LABOR RELATIONS BOARD

Fiscal Year 1991

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1).

Introduction

During the past year, the Maine Labor Relations Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were substantial fluctuations in the Board's activities compared to the previous year. While there was a dramatic increase in the number of prohibited practice complaints filed, there was a moderate decrease in representation activity. Continuing a trend noted last year, again there was a decrease in the number of decertification election petitions filed. In the dispute resolution area, there was a modest decrease in the number of mediation requests received; however, both the number of fact-finding requests received and the number of fact-finding hearings conducted increased markedly. Overall, the work load of the Board increased when compared with FY 1990.

The most significant event affecting the level of services that the Board has been able to provide this year has been the shortfall of per diem funds in the personal services line item of the Board's budget. In response to the State's fiscal situation, the Board's budget was cut. In order to avoid overruns in the per diem account, an accrual accounting system was implemented. During the latter part of the second and fourth quarters, the per diem reduction curtailed the executive director's ability to appoint mediators to negotiations disputes and limited the activity of the Board. As a consequence of such limitation, twelve prohibited practice cases will have to be carried forward to the next fiscal year, compared with seven carryovers last year.

Consistent with the State's effort to reduce overall spending this year, the Board's staff sought to minimize in-state travel by conducting

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representation elections by mail ballot, rather than on-site, to the greatest practicable extent. Other cost-cutting measures included significantly curtailing staff and professional employee training and requiring members of the Panel of Mediators to use the State telephone system, rather than using commercial service at Board expense.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff continues to be a primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that did not involve matters over which the Board has jurisdiction, the staff continued its policy of providing some orientation for the inquirer and suggesting other agencies or organizations that might be of help.

A new primary Employer Representative, Howard Reiche, Jr., of Falmouth, a new Alternate Chair, James D. Libby of Gorham, and a new Alternate Employer Representative, Eben B. Marsh of Denmark, were appointed and Second Alternate Employer Representative Jim A. McGregor of Coopers Mills was reappointed by Governor McKernan on February 25, 1991; all were confirmed by the Legislature on March 18, 1991. The other members of the Board continue to be Chair Peter T. Dawson of Hallowell, Alternate Chair Pamela D. Chute of Brewer, Employee Representative George W. Lambertson of Readfield, Alternate Employee Representative Wayne W. Whitney of Brunswick, and Second Alternate Employee Representative Gwendolyn Gatcomb of Winthrop.

There were two changes in the Board's full-time staff this year. First, Nancy Connolly Fibish resigned from the position of executive director in order to resume the practice of labor arbitration in the Baltimore-Washington area. The Board named Marc P. Ayotte as executive director, effective January 2, 1991. Mr. Ayotte had almost ten years' experience as a member of the Board's staff at the time of his appointment. Second, on December 17, 1990, Board Counsel M. Wayne Jacobs was mobilized into active duty with the U.S. Army in Germany, where he remains as of the preparation of this report.

Legislative Matters

The Board submitted three pieces of legislation for consideration in the first session of the 115th Legislature. All three were signed into law and will become effective 90 days after the session ends. The first, Public Law (P.L.) 92, removes the statutory requirement that the Board provide five nominees to the Governor for filling a vacancy on the panel of mediators. The Board has had considerable difficulty finding five qualified candidates at any one time, and will no longer be required to do so. The second piece of legislation, P.L. 143, clarifies various appellate procedures under the four collective bargaining statutes that the Board administers. The third, P.L. 166, amends the University of Maine System Labor Relations Act to explicitly provide for a duty of fair representation parallel to the duty that appears in the other three statutes.

Several other bills were introduced in this legislative session that proposed changes in the four public sector bargaining statutes. The status of two of these bills had not been resolved at the time this report was drafted -- they had been placed on the Appropriations Table and the Appropriations Committee had not completed its work. L.D. 828 would extend collective bargaining rights to certain employees who work for independent State agencies not now defined as public employers under either the Municipal Public Employees Labor Relations Law (MPELRL) or the State Employees Labor Relations Act (SELRA). L.D. 932 would establish a task force to review the dispute resolution procedures currently utilized for public sector bargaining and make recommendations for their improvement.

Five bills were carried over for consideration in the next legislative session. L.D. 825 proposes to clarify SELRA by defining the term "policy" in the exclusion of certain policy-making positions from collective bargaining. It also sets up a procedure for the determination of whether a newly created job classification falls into the policy-making exclusion. L.D. 1218 would remove the six-month exclusion from the definition of covered employees in all four bargaining statutes. L.D. 1248 proposes the repeal of the provision in the MPELRL that excludes educational policy matters from mandatory collective bargaining. L.D. 1384 would make any provision of a negotiated contract enforceable during the term of the contract, unless the Board had determined that a prohibited practice occurred at the

time the provision was negotiated. The fifth bill, L.D. 1657, would require open bargaining for teacher contracts under the MPELRL. The next annual report will include a status report on these five bills, as well as the two that are currently before the Appropriations Committee.

Three bills that were introduced were rejected by the Legislature's Labor Committee. L.D. 350 would have required binding arbitration on unresolved financial issues in collective bargaining for teachers under the MPELRL. L.D. 351 proposed to establish a good cause standard for dismissal of any private sector employee who had worked for an employer for a year or more; it would have given the M.L.R.B. the responsibility for administering an arbitration procedure for disputes under the new law. Finally, L.D. 1250 would have explicitly permitted the negotiation of union shop, agency shop and fair share arrangements under the MPELRL.

Bargaining Unit and Election Matters

During fiscal year 1991, the Board received 41 voluntary or joint filings for the establishment of or change in collective bargaining units under its jurisdiction. There were 53 filings in FY 90, 31 in FY 89, 24 in FY 88, 19 in FY 87, and 9 in FY 86. Of the 41 FY 91 filings, 19 were for units within educational institutions, 16 within municipal government, and 6 concerned State employees.

Fifty-nine (59) unit determination or clarification petitions (filed when there is no agreement on the composition of the bargaining unit) were filed in FY 91; 19 were for determinations, and 40 were for clarifications. Six (6) of the unit filings actually went to hearing and decision. There were 36 unit filings in FY 90, 21 in FY 89, 30 in FY 88, 14 in FY 87, and 24 in FY 86. Of the 40 unit clarification petitions filed, 35 concerned State employees.

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 91 there were 7 voluntary recognitions filed. Thirty-two (32) election requests were filed in FY 91; 25 elections were actually held or are scheduled. In FY 90, there were 12 voluntary recognitions filed, 54

election requests received, and 35 elections held.

In addition to representation election requests, the Board received 5 requests for decertification/certification, which involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. Four (4) requests resulted in elections.

The Board received 1 straight decertification petition in FY 91, a decrease from the 2 received in FY 90 and 9 in FY 89. No new union is involved in these petitions; rather the petitioner is simply attempting to remove the incumbent agent. An election was conducted in this matter.

There were 6 election matters carried over from FY 90. Consequently, there were 44 such matters requiring attention during the fiscal year; this compares with 61 in FY 90, 35 in FY 89, 32 in FY 88, 36 in FY 87, and 31 in FY 86.

Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

New mediation requests received during fiscal year 1991 dropped to 89 from 115 in FY 90, 107 in FY 89, and 91 filings in FY 88. In addition to the new mediation requests received during the fiscal year just ended, there were 69 matters carried over from FY 90 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 158, compared to 144 in the previous fiscal year. The activity in both years is continuing evidence of the sustained level of interest in the mediation process shown by the public sector labor relations community. As recorded in the annual reports for the past few years, it is also a continuing measure of that community's confidence not only in the process of mediation, but in the competence and expertise represented by the membership of the

Panel as a whole.

That competence and expertise is reflected in the 78 percent settlement rate achieved for matters resolved through mediation efforts during this fiscal year, including carryovers from FY 90. Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the twelve-month period, we report settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

Fact-finding is the second step in the three-step process of statutory dispute resolution. In fiscal year 1991 there were 34 fact-finding requests filed. The 34 requests represent nearly a 70 percent increase over the last year. Seventeen (17) petitions were withdrawn or otherwise settled, 14 requests went to hearing, and 3 petitions are pending hearing. Last year only 6 fact-finding hearings were held. The significant increase in the number of fact-finding requests filed and hearings conducted reflects the difficulty of reaching accord on collective bargaining agreements during hard economic times.

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties only as to non-monetary issues. Issues involving salaries, pensions and insurance are subject to interest arbitration, but an award on these issues is advisory only. In recent years the Board has received few interest arbitration requests, and in FY 91 it received none. There were two interest arbitration requests received in FY 90. Although the public statutes require that such arbitration awards be filed with the Board, usually they are not so filed. While it is assumed that there were no interest arbitration awards issued in the public sector during the year, it may be that parties have simply failed to provide proper notification to the Board.

Prohibited Practices

One of the Board's main responsibilities is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full,

three-person Board. Twenty-eight (28) complaints were filed in FY 91; this represents a 47 percent increase over FY 90, and it represents a significant increase over the number of filings in the past seven years. During that time, complaints filed have fluctuated from a low of 17 to a high of 25, with the average being 21.

In addition to the 28 complaints filed in FY 91, there were 7 carryovers from FY 90, compared with 19 complaints and 9 carryovers last year. The Board conducted 15 hearings during the year, compared with 5 in FY 90, and Board members sitting as a single prehearing officer held prehearing conferences in 12 cases, the same as in FY 90. In 8 matters, the Board issued formal Decisions and Orders; an additional order is being drafted. One matter has been deferred pending the resolution of related grievance arbitration proceedings. Twelve complaints await hearing. Twelve complaints were dismissed or withdrawn at the request of the parties; such requests generally occur when the complaint is related to contract bargaining and after the parties reach agreement on and ratify the contract. In summary, the Board's prohibited practices complaint activity appears to be counter-cyclical in relation to the vitality of the regional economy. As was the case during the economic downturn of the early 1980's, the number of complaints filed seems to increase with the worsening of the economic outlook.

Appeals

Two unit clarifications and one unit determination (unit merger) by a Board hearing examiner were appealed to the Board and the Board issued formal decisions in these cases. Appeals from two Board decisions involving Council 93, AFSCME, AFL-CIO and the State of Maine, one a unit clarification appeal and the other a prohibited practice decision, are now pending in the Superior Court.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

	<u>FY 1986</u>	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1989</u>	<u>FY 1990</u>	<u>FY 1991</u>
Unit Determination/ Clarification Requests		-53%	+114%	-30%	+42%	+72%
Number filed---	24	14	30	21	36	59
Agreements on Bargaining Unit (MLRB Form #1)		+111%	+21%	+29%	+71%	-23%
Number filed---	9	19	24	31	53	41
Voluntary Recognitions (MLRB Form #3)		-	+125%	+44%	-7.7%	-42%
Number filed---	4	4	9	13	12	7
Bargaining Agent Election Requests		-42%	+43%	-10%	+156%	-43%
Number filed---	24	14	20	18	46	26
Decertification Election Requests		-26%	-40%	+56%	-43%	-25%
Number filed---	19	15	9	14	8	6
Mediation Requests		+22%	-24%	+19%	+7.5%	-23%
Number filed---	98	120	91	107	115	89
Fact-Finding Requests		-5.3%	-17%	+93%	-45%	+70%
Number filed---	19	18	15	29	20	34
Prohibited Practice Complaints		-12%	-23%	+41%	-21%	+47%
Number filed---	25	22	17	24	19	28

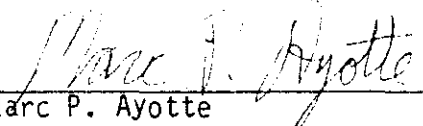
As the summary table indicates, the demand for the Board's services increased over the last fiscal year. The increase in organizational activity, coupled with a decline in the number of decertification petitions filed, may well indicate that demand for all of the Board's services will

increase in the future.

During FY 91, public sector labor-management relations in Maine continued to exhibit the maturity that has been evident over the past few years. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of labor relations is evidenced by the strong demand for mediation services and the willingness of parties to settle prohibited practice cases. In sum, the Board's regulatory and dispute resolution services successfully fostered public sector labor peace during the last fiscal year.

Dated at Augusta, Maine, this 28th day of June, 1991:

Respectfully submitted,



Marc P. Ayotte
Executive Director
Maine Labor Relations Board